

Supreme Court, U.S.
FILED

No. 05-521 SEP 6 - 2005

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In The
SUPREME COURT OF THE UNITED STATES

WILLIAM ALLEN ARNOLD,
Defendant-Appellant-Petitioner

v.

UNITED STATES OF AMERICA,
Plaintiff-Appellee-Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ORIGINAL PETITION FOR
WRIT OF CERTIORARI
(FOLLOWING REMAND)

WILLIAM ALLEN ARNOLD
c/o 3338 SUMMERCHASE COURT
COLUMBUS, GEORGIA 31909

Questions Presented

Reasserted from No. 04-1345

Subject Matter Jurisdiction

1. What does *defraud* mean?
2. Does 18 U.S.C. § 371 (*defraud*) alter that definition?
3. By what procedure is a crime defined?
(Has the “Klein conspiracy” ever been a crime?)

Plea Agreements

4. Can an instantly self-breaching plea agreement support a judgment? [Fleming]

Evidence, Sentencing

5. Are ex parte presentations of purported “damages,” offered for the first time at sentencing, *testimonial statements*?
6. Based on what evidence is the threshold “maximum sentence” determined, by which a subsequent upward (or downward) departure is then taken?

Double Taxation, Simultaneous Double Jeopardy

7. Can either judgment stand where they create “simultaneous double jeopardy?”

New Here, following remand

McDade Act, Lack of Signature Authority

[Raised for first time here.]

8. Was Arnold ever indicted?
(Does a Local Rule overrule the McDade Act?)

Booker Clarification

9. Does *Dowling* (11th Cir. 2005) improperly limit *Booker*?
10. Does *Booker* shift the burden of proof?

Parties

The court of appeals judgment sought to be reviewed is the one issued on remand, and the parties to the appellate proceeding are as follows:

Case No. 03-12810-DD

UNITED STATES OF AMERICA

[PAUL I. PEREZ, U.S. Attorney]
[SUSAN G. ROTHSTEIN-YOUAKIM]
[SUSAN HUMES RAAB (sole signatory)]

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Citations to decisions below

None

Jurisdiction

(i) Date Judgment (on Remand) Was Entered
17 August 2005 [+90: 15 November 2005]

(ii) Rehearing, Extension None.

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction

Review by certiorari of decision by court of appeals,
28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding notice of statutory challenge, Rule 29.4(b)

Technical, strict-construction reading: no *Act of Congress* is challenged. To address the policy of Rule 29.4(b), even if both conditions precedent fail, it's a federal, hodgepodge *non-statute*, treated for 50 years as a statute, that is challenged.

Therefore, "28 U.S.C. § 2403(a) may apply;" the initial filing was served on the Solicitor General; and no prior, formal certification/notice, outside the normal course of litigation, has been issued.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Key Statutory and Charging Instrument Language

Title 18

Section 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 371 (2000) (emphasis added).

Internal Revenue Code

Section 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

IRC § 7201 (2000) (emphasis added).

**Section 7212(a). Attempts to interfere with
administration of internal revenue laws**

(a) Corrupt or forcible interference

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way *corruptly* or by force or threats of force (including any threatening letter or communication) *obstructs or impedes*, or *endeavors to obstruct or impede*, the due administration of this title, shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than \$3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

IRC § 7212(a) (2000) (emphasis added) (Internal Revenue Code of 1954, ch. 736, 68A Stat. 855 (Aug. 16, 1954)). Cf. *Klein*, 247 F.2d at 910-11 (superceding indictment—Sep. 17, 1954).

The so-called "Klein conspiracy" language

The "Klein conspiracy" language of Count One.

See (2 App. Indictment 2 (¶ A)) (No. 03-12283-DD):

to defraud the United States Department of the Treasury and the Internal Revenue Service (IRS) ... for the purpose of impeding, impairing, defeating, and otherwise obstructing the lawful functions of the IRS in the ascertainment, computation, assessment, and collection of federal taxes ... through deceit, craft, trickery and dishonest means.